



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/172852

PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to reduce FoodShare benefits (FS), a hearing was held on April 19, 2016, at Milwaukee, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the agency correctly determined FS after a change.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner began to receive FS as a one-person household in January, 2016. His initial monthly allotment was \$102 based upon \$579 monthly social security and \$166.92 self-employment.
3. In March petitioner's income was automatically updated because he began to receive Supplemental Security Income (SSI) totaling \$107.78 monthly. Effective April 1 FS was reduced to \$53. In addition petitioner's social security income increased by \$104.90 because the state

began to pay his monthly Medicare Part B premium. The agency made that change effective May 1, 2016, causing petitioner's May FS to go down to \$22.

4. Petitioner filed this appeal and requested that FS not be continued at the March level, but the agency issued a \$49 supplement anyway. The \$49 supplement was still in petitioner's FS account on the date of the hearing, and he intended to return them unused.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(6); FS Handbook, App. 4.6.7.

I reviewed the calculations for each month and they are correct. The initial reduction was due to the increased income from SSI. The May 1 reduction was due to adding the Part B premium to petitioner's income because it no longer was being deducted from petitioner's social security.

Petitioner's major concern was that he not be subject to an overpayment. As noted in the findings, petitioner did not want FS continued, but the agency did so. However, because the \$49 supplement was still on petitioner's account unused, Ms. [REDACTED] agreed to help him return the supplement. It is possible that there might be an overpayment for April for the difference between the \$53 issued and the \$22 that would have been issued if the Part B income had been applied in April. However, the agency has not yet taken an action to recover the difference. I note to petitioner that FS rules require the agency to recover an overpayment even if it was caused by agency error. See 7 C.F.R. §273.18(b)(3). At this point, however, it is unknown whether the agency will consider the extra FS issued in April to be an overpayment.

CONCLUSIONS OF LAW

The agency correctly reduced FS after petitioner's income increased.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of April, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 22, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability